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6 PINOLEVILLE POMO NATION, et al

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10

11 PINOLEVILLE POMO NATION,
12 PINOLEVILLE POMO NATION
13 ENVIRONMENTAL ASSOCIATION AND
LEONA WILLIAMS,

14 Plaintiffs,

15 v.
16

17 UKIAH AUTO DISMANTLERS, WAYNE
18 HUNT ISABEL LEWRIGHT, WARRIOR
INDUSTRIES, INC., RICHARD MAYFIELD,
19 ROSS JUNIOR MAYFIELD, PAULA
MAYFIELD, KENNETH HUNT, U.S.
20 ALCHEMY CORPORATION AND DOES 1-
50, INCLUSIVE,

21 Defendants.
22
23
24

Case No.: C 07 2648

**DECLARATION OF MICHAEL
S. BIGGS IN RESPONSE TO
SUPPLEMENTAL
DECLARATION OF HANS HERB
DATED 6/20/08**

Date: 06/25/08
Time: 1:30 P.M.
Dept: Courtroom C, 15th Floor
Judge: Susan Illston

25 I, MICHAEL BIGGS, declare as follows:

26 1. I am making this declaration in response to the declaration of Hans Herb as described in
27 the above caption.
28

1 2. I am asking this court to take judicial notice of the case of GOVERNING COUNCIL OF
2 PINOLEVILLE INDIAN COMMUNITY v. MENDOCINO COUNTY, BOARD OF
3 SUPERVISORS OF MENDOCINO COUNTY, ROSS MAYFIELD & BRENT MAYFIELD,
4 United States District Court for the Northern District of California Case No. C87-4320
5 particularly the transcript for hearing on the preliminary injunction (Copy is attached as Exhibit
6 A) and this District's Court ruling on preliminary injunction in a published opinion that can be
found in 684 F. Supp. 1042. (Copy is attached as Exhibit B)

7 3. As can be gleaned from these documents, the case essentially involves the same parties
8 and the same issues. Judge Lynch ruled in that decision that Indians particularly the Pinoleville
9 Pomo Nation has sovereign authority to regulate development on its reservation and can zone
10 land held in fee by non Indians. The ultimate ruling was that the court granted the preliminary
11 injunction against the Mayfields' from constructing their plants.

12 4. The transcripts and ruling shows that Ross and Brent Mayfield had a lease with an option
13 to purchase, which they exercised after they were on notice of PPN's intended zoning ordinances
14 concerning development on the reservation. Therefore, they acquired the property "with their
15 eyes open" meaning that issues between their industrial enterprises and the tribes desire to
maintain the natural habitat will inevitably arise.

16 5. Contrary to Mr. Herb's declaration the case is not "moot". Instead, it's res judicata. This
17 issue has already been decided by this court in the 1980's in favor of PPN.

18 6. Instead of dismissing plaintiffs' motion as moot, I am requesting to summarily grant the
19 preliminary injunction because defendants have demonstrated that they have not abided by the
20 tribal ordinances, orders from various regulatory agencies thereby causing PPN's small
21 reservation to sue to court to have their tribal sovereignty rights enforced. Further, since
22 defendants are in non-compliance with old injunction, no reason exists that they will abide by the
23 tribal council's decision voluntarily and will abide by the injunction previously entered against
them. Therefore, a new, more current injunction would be in order.

24 7. For this reason, I am requesting this court to absorb the record, facts, and ruling of the
25 prior case in the preliminary injunction that is currently being requested.

26 8. I have read the transcript of the message I left with Attorney Hans Herb. I am
27 disappointed that he saw fit to include it in his opposition papers. It only serves to confuse the
28

1 issues this court must entertain in order to determine whether a preliminary injunction is
2 appropriate.

3 9. In a spirit of meeting and conferring as well as professional courtesy, my purpose for
4 leaving a light hearted message was to "break the ice" with candor and bantering so as to
5 facilitate a working relationship, hoping to resolve the issues without court intervention. I was
6 attempting to establish an open and candor line of communication with Mr. Herb so we both can
7 work productively on behalf of both of our clients.

8 10. Since those statements were made with objective of facilitating settlement negotiations, I
9 ask that this court strike it from the record under Rule 409.

10 I declare under the penalty of perjury that the foregoing is true and correct except to those
11 matters based on information and belief, and to those I believe them to be true. Executed
12 in Petaluma, California.

13 Dated: June 21, 2008

/S/ Michael S. Biggs

14 Michael S. Biggs

15 Attorney for Plaintiffs
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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 PINOLEVILLE POMO NATION,
10 PINOLEVILLE POMO NATION
ENVIRONMENTAL ASSOCIATION AND
11 LEONA WILLIAMS,

12 Plaintiffs,

13 v.
14

15 UKIAH AUTO DISMANTLERS, WAYNE
HUNT ISABEL LEWRIGHT, WARRIOR
16 INDUSTRIES, INC., RICHARD MAYFIELD,
ROSS JUNIOR MAYFIELD, PAULA
17 MAYFIELD, KENNETH HUNT, U.S.
18 ALCHEMY CORPORATION AND DOES 1-
50, INCLUSIVE,

19 Defendants.
20
21

Case No.: C 07 2648

**PROPOSED ORDER GRANTING
INJUNCTIVE RELIEF**

Date: 06/25/08

Time: 1:30 P.M.

Dept: Courtroom C, 15th Floor

Judge: Susan Illston

22 The application of plaintiffs PINOLEVILLE POMO NATION, PINOLEVILLE POMO
23 NATION ENVIRONMENTAL ASSOCIATION AND LEONA WILLIAMS having come on
24 regularly for hearing, the Court having reviewed the documents and papers on file herein and
25 having heard the argument of counsel, and good cause appearing therefore,
26 IT IS HEREBY ORDERED that plaintiffs' application for Preliminary Injunction is GRANTED

27 DATED: _____

28 **THE HONORABLE SUSAN ILLSTON**
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE: THE HONORABLE EUGENE F. LYNCH, JUDGE

GOVERNING COUNCIL OF PINOLEVILLE)
INDIAN COMMUNITY,)

PLAINTIFF,)

-VS-)

NO. C 87-4320 EFL)

MENDOCINO COUNTY, BOARD OF)
SUPERVISORS OF MENDOCINO COUNTY;)
ROSS MAYFIELD, BRENT MAYFIELD,)

DEFENDANTS.)

SAN FRANCISCO, CALIFORNIA
FRIDAY, NOVEMBER 20, 1987

APPEARANCES:

FOR PLAINTIFF:

CALIFORNIA INDIAN
LEGAL SERVICES
200 W. HENRY STREET
P.O. BOX 488
UKIAH, CALIFORNIA 95482
BY: DAVID J. RAPPORT, ESQ.

FOR DEFENDANT
MENDOCINO COUNTY AND
BOARD OF SUPERVISORS:

H. PETER KLEIN, COUNTY COUNSEL
COUNTY OF MENDOCINO
COURTHOUSE, ROOM 202
UKIAH, CALIFORNIA 95482
BY: RICHARD M. FLORES,
DEPUTY COUNTY COUNSEL

IN PRO PER:

ROSS MAYFIELD, JR.
BRENT MAYFIELD
500 C PINOLEVILLE ROAD
UKIAH, CALIFORNIA 95482

REPORTED BY: SARA L. LARKIN, CSR, CP, CM
OFFICIAL REPORTER, USDC

COMPUTERIZED TRANSCRIPTION BY XSCRIBE

1 FRIDAY, NOVEMBER 20, 1987

10:41 A.M.

2
3 THE COURT: PINOLEVILLE INDIANS VERSUS MENDOCINO
4 COUNTY.

5 THE CLERK: CIVIL CASE 87-4320.

6 MR. RAPPORT: DAVID RAPPORT FOR THE PLAINTIFF.

7 THE COURT: OKAY.

8 MR. FLORES: GOOD MORNING, YOUR HONOR. RICHARD
9 FLORES FOR THE COUNTY OF MENDOCINO.

10 MR. BRENT MAYFIELD: BRENT AND ROSS MAYFIELD. WE
11 ARE REPRESENTING OURSELVES.

12 THE COURT: RIGHT, OKAY. LET ME JUST GET SOME
13 NOTES TO READ HERE. I HAVE TWO CASES ON THE CALENDAR THAT
14 ARE GOING TO BE BY PHONE, SO I'M TRYING TO FIT THEM ALL IN
15 HERE.

16 (PAUSE IN PROCEEDINGS)

17 THE COURT: ALL RIGHT. THE INDIANS, ALL RIGHT.

18 OKAY. WELL, IT SEEMS WE HAVE FEDERAL JURISDICTION.
19 IT'S A FEDERAL QUESTION UNDER 1331. INTERESTING THOUGH, AND
20 I PLAN TO WRITE AN OPINION ABOUT THIS, BUT IT STRIKES ME
21 THAT INJUNCTION PROBABLY SHOULD BE GRANTED.

22 MR. FLORES: THIS WOULD BE A PRELIMINARY
23 INJUNCTION, YOUR HONOR?

24 THE COURT: WELL, IT WOULD BE A PRELIMINARY
25 INJUNCTION AND WOULD SET IT FOR TRIAL, YEAH.

1 MR. FLORES: WHAT ABOUT BOND?

2 THE COURT: WHAT TYPE OF BOND DO YOU THINK YOU'RE
3 GOING TO WANT THAT YOU CAN PAY?

4 MR. RAPPORT: WELL, YOUR HONOR, WE COMMUNICATED IN
5 OUR PLEADINGS THEY FILED THIS CASE IN FORMA PAUPERIS.

6 THE COURT: THAT DOESN'T MEAN YOU COULDN'T DRAW UP
7 SOME SORT OF A BOND IT SEEMS TO ME.

8 MR. RAPPORT: AS INDICATED IN THE PETITION THEY
9 FILED, THEY REALLY HAVE NO DISCRETIONARY FUNDS THAT ARE
10 AVAILABLE THAT THEY CAN COMMIT TO THAT.

11 THE SOLE SOURCE OF FUNDS ARE FEDERAL GRANTS THAT
12 ARE DESIGNATED FOR SPECIFIC PURPOSES, AND THEY HAVE NO MONEY
13 AVAILABLE THAT THEY COULD USE TO POST BOND. I THINK THAT
14 WAS THE BASIS FOR GRANTING THE IEP PETITION IN THE FIRST
15 PLACE.

16 THE COURT: WHAT TYPE OF A BOND DO YOU THINK IT
17 SHOULD BE?

18 MR. RAPPORT: EXCUSE ME, YOUR HONOR.

19 I ALSO WANTED TO POINT OUT THAT THE ONLY -- THAT
20 THE BOND WOULD SECURE ANY DAMAGES WHICH RESULTED UNTIL FINAL
21 JUDGMENT. THAT'S WHAT THE BOND IS SUPPOSED TO SECURE.

22 AND THE ONLY DAMAGES THAT HAVE BEEN ALLEGED ARE THE
23 LOSS OF INCOME FROM OPERATING THIS CEMENT PLANT. AND AS WE
24 POINTED OUT, THEY WENT INTO THAT BUSINESS AFTER THE
25 ORDINANCE WAS ADOPTED AND AFTER THE TRIBE HAD APPEALED THE

1 DECISION TO THE BOARD OF SUPERVISORS.

2 AND UNDER STATE LAW, IF THE TRIBE CAN FILE A
3 LAWSUIT WITHIN 30 DAYS -- AND THE STATE LAW SAYS IF THEY
4 PROCEED AT THAT POINT, THEY DO THEIR OWN RISK.

5 SO BASICALLY THEY UNDERTOOK ANY FINANCIAL LOSSES AT
6 THIS POINT AT THEIR OWN RISK, AND I DON'T THINK A BOND WOULD
7 BE JUSTIFIED, IN ANY EVENT.

8 THE COURT: HOW DO THEY GET DAMAGES IF YOU'RE WRONG
9 OR I'M WRONG? HOW WILL THEY GET THEIR DAMAGES? HOW WOULD
10 THEY GET THEIR DAMAGES FOR THE LOST INCOME FOR RUNNING THIS
11 CEMENT PLANT?

12 MR. RAPPORT: WELL, IF THEY CAN SUE THE TRIBE, THEY
13 WOULD HAVE TO SUE THE TRIBE.

14 THE COURT: WHY COULDN'T THEY SUE THE TRIBE -- IF
15 I'M GOING TO GRANT A PRELIMINARY INJUNCTION HERE -- AND IT
16 TAKES SOME PERIOD OF TIME TO ACTUALLY GET A TRIAL ON IT, SIX
17 MONTHS OR SO -- IF THEY CAN'T OPERATE THE CEMENT PLANT
18 DURING THAT TIME AND WE FIND OUT WE SHOULDN'T HAVE GRANTED
19 THE PRELIMINARY INJUNCTION, AND THEY'RE SUCCESSFUL, HOW DO
20 THEY THEN GET THEIR COSTS BACK AGAINST THE INDIANS FROM THIS
21 LAWSUIT?

22 MR. RAPPORT: FIRST OF ALL, I'M NOT SURE THEY WOULD
23 BE ENTITLED TO THAT COST AGAINST THE TRIBE UNDER THE
24 CIRCUMSTANCES, YOUR HONOR.

25 AS I POINTED OUT, UNDER STATE LAW, IF THE TRIBE HAD

1 BROUGHT THE STRAIGHT CEQA ACTION, DURING THE TIME THAT THE
2 ACTION WAS PENDING, THEY'D BE PROCEEDING AT THEIR OWN RISK.

3 SO IF IT WAS LATER DETERMINED THAT AN EIR WAS
4 REQUIRED, THEY WOULDN'T HAVE BEEN ENJOINED FROM OPERATING
5 DURING THAT TIME, BUT ANY COSTS THEY INCURRED WOULD BE AT
6 THEIR RISK. THEY WOULDN'T HAVE ANY INVESTED RIGHT TO
7 CONTINUE OPERATIONS OR ANYTHING ELSE.

8 MR. FLORES: YOUR HONOR, THE CEQA MATTER IS
9 PROCEDURES AS SUCH THAT THEY DO PROCEED AT THEIR OWN RISK,
10 BUT THEY CAN PROCEED RIGHT HERE.

11 WE HAVE AN INSTANCE WHERE PRELIMINARY INJUNCTION
12 HAS BEEN REQUESTED, AND THEY CAN'T, NOT EVEN AT THEIR OWN
13 RISK -- RISK OF CONTEMPT OF COURT. SO I THINK A BOND SHOULD
14 BE REQUIRED.

15 AND THE MAYFIELDS WOULD BE ABLE TO ADDRESS IN TERMS
16 OF WHAT FORM OF THE BOND...

17 (PAUSE IN PROCEEDINGS)

18 THE COURT: WHAT EVIDENCE HAVE YOU FILED THAT THEY
19 HAD NOT GONE AHEAD AND DONE ANYTHING AND THEN PROCEEDED TO A
20 HEAD AFTER YOU FILED YOUR SUIT?

21 MR. RAPPORT: I'M RELYING ON THE DECLARATIONS THAT
22 THEY SUBMITTED, YOUR HONOR.

23 THE DECLARATION -- APPARENTLY THE SITUATION IS
24 THEY'VE LEASED -- THEY'VE GOT A LEASE WITH A CEMENT COMPANY
25 TO OPERATE THE CEMENT PLANT. ACCORDING TO THE DECLARATION

1 OF THE VICE-PRESIDENT OF THE CEMENT COMPANY, THEY WAITED
2 UNTIL AFTER THEY GOT THEIR DEVELOPMENT REVIEW PERMIT FROM
3 THE COURT BEFORE THEY MOVED EQUIPMENT ON TO THE SITE AND
4 BEGAN OPERATIONS.

5 THE COURT: THE BUILDING IS ALREADY THERE, RIGHT?

6 MR. FLORES: YES.

7 MR. RAPPORT: RIGHT, BUT IT WAS APPARENTLY MOVED
8 THERE AFTER THEY GOT THEIR DEVELOPMENT REVIEW PERMIT.

9 BY THAT TIME, OBVIOUSLY THE ORDINANCE WAS IN PLACE
10 AND THE TRIBE'S OPPOSITION TO THE PROJECT, AS WAS WELL
11 MANIFESTED THROUGH THE APPEAL PROCESS. SO THEY KNEW GOING
12 IN THAT THE GOVERNING COUNSEL WAS OPPOSED TO THIS PROJECT,
13 AND THEY KNEW THAT THE GOVERNING COUNSEL WAS PURSUING ALL
14 THEIR REMEDIES.

15 SO IF THEY ARE NOW GOING TO INCUR COSTS FROM HAVING
16 GONE AHEAD WITH THE PROJECT KNOWING THAT, THE TRIBE'S
17 POSITION IS THAT THEY HAVE ASSUMED THE RISK OF THAT AT THIS
18 POINT. IT'S NOT FAIR TO REQUIRE THE TRIBE TO POST A BOND TO
19 SECURE THEM AGAINST DAMAGES WHICH THEY UNDERTOOK KNOWING
20 THAT THEY WERE GOING TO BE IN THIS POSITION TO BEGIN WITH.

21 THE COURT: DID THEY GO AHEAD ONLY AFTER THEY KNEW
22 THE TRIBE WAS SUING?

23 MR. FLORES: WELL --

24 MR. BRENT MAYFIELD: WE ENTERED INTO A CONTRACT
25 WITH --

1 THE COURT: YOU REPRESENT YOURSELF?

2 MR. BRENT MAYFIELD: YES.

3 THE COURT: YOU'RE NOT A CORPORATION?

4 MR. ROSS MAYFIELD: WE ARE A CORPORATION.

5 MR. BRENT MAYFIELD: WE WERE SUED AS INDIVIDUALS.

6 THE COURT: IS THAT RIGHT; THEY WERE ONLY SUED AS
7 INDIVIDUALS?

8 MR. RAPPORT: THEY WERE SUED AS INDIVIDUALS, YOUR
9 HONOR.

10 MR. BRENT MAYFIELD: THE CONCRETE PLANT -- WE
11 ENTERED INTO A CONTRACT WITH THEM ON APRIL 1ST, AND THE
12 ORDINANCE I BELIEVE DIDN'T COME INTO EFFECT UNTIL MAY 22ND.

13 THE CONCRETE PLANT -- ACTUALLY WE HAD TWO OF THEM
14 THERE, AND THE FIRST ONE WAS THERE PRIOR TO OUR CONTRACT
15 DATE, AND --

16 THE COURT: CAN I JUST BACK UP?

17 YOU KNEW, HOWEVER, THAT YOU WERE ON -- YOU KNEW,
18 HOWEVER, THAT THE RANCHERIA BUSINESS WAS OVER WITH AND THAT
19 THE INDIANS THAT NOW WERE THE -- YOU WERE ESSENTIALLY ON
20 INDIAN LAND, RIGHT?

21 MR. BRENT MAYFIELD: NO.

22 MR. ROSS MAYFIELD: NO.

23 MR. BRENT MAYFIELD: WE WEREN'T AWARE OF THE
24 JURISDICTION PROBLEM UNTIL WE WERE -- AT SOME POINT IN
25 THE --

1 THE COURT: BUT A LOT OF TIME HAD PASSED. YOU
2 SHOULD HAVE BEEN AWARE.

3 I MEAN I'M NOT SAYING WHETHER YOU ACTUALLY KNEW OR
4 NOT. SOME COUPLE YEARS HAD PASSED, RIGHT?

5 MR. BRENT MAYFIELD: IT NEVER SHOWED UP ON OUR
6 TITLE REPORTS.

7 WE HAD NO INCLINATION THAT THERE WAS ANY
8 JURISDICTION PROBLEM OR THAT THERE WAS A RESERVATION THAT
9 WAS STILL ACTIFIED (SIC) UNTIL WE WENT BEFORE THE
10 SUPERVISORS OR JUST LIKE A MONTH BEFORE THAT.

11 THE COURT: WHAT DO YOU SAY THE ISSUES FOR TRIAL
12 WOULD BE THEN?

13 MR. FLORES: WELL, THE ISSUES FOR TRIAL WOULD BE,
14 ONE, THE INTERPRETATION OF THE HARDWICK CASE AS TO WHETHER
15 OR NOT THE COUNTY OR THE TRIBAL COUNCIL HAS AUTHORITY TO
16 REGULATE THIRD PARTY PURCHASERS WITHIN THE RANCH --

17 THE COURT: I THINK THEY HAVE A RIGHT TO DO IT --
18 IT'S A BALANCING TEST DEPENDING ON THE FACTS, RIGHT?

19 IS THAT RIGHT?

20 MR. FLORES: I DON'T THINK WE GET TO THAT BECAUSE
21 OF THE HARDWICK CASE.

22 THE CASES THAT ARE DISCUSSED AT LENGTH IN THE
23 BRIEFS, NONE OF THEM HAVE A CASE WHERE THERE WAS ACTUALLY A
24 JUDGMENT INVOLVING TWO OF THE PARTIES, THE COUNTY OF
25 MENDOCINO AND THE PINOLEVILLE RANCHERIA.

1 AND THE HARDWICK CASE IS SPECIFIC REGARDING WHAT
2 THE INDIANS' RIGHTS ARE AND WHAT THE COUNTY'S RIGHTS ARE,
3 AND WHAT THE THIRD PARTY PURCHASERS' RIGHTS ARE.

4 AND THAT IS THAT ANY ACTIONS CAN BE TAKEN BY THE
5 COURT TO THE EXTENT THAT THEY CANNOT ADVERSELY --

6 THE COURT: ONE OF THE FIRST ISSUES HERE UNDER THE
7 MONTANA CASE, THE SUPREME COURT CASE, IS THE ACTIONS OF
8 INDIANS ARE LIMITED OVER NON-INDIAN MEMBERS, RIGHT?

9 MR. RAPPORT: THAT'S RIGHT, YOUR HONOR.

10 THE COURT: AND IT'S A BALANCING TEST TO DETERMINE
11 THAT FACT ESSENTIALLY.

12 MR. RAPPORT: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: I VISUALIZE A TRIAL ON THE BALANCING
14 TEST TO DETERMINE WHETHER A PERMANENT INJUNCTION SHOULD BE
15 GRANTED OR NOT.

16 WHAT DO YOU VISUALIZE AT TRIAL?

17 MR. FLORES: WELL, I VISUALIZE THAT AS THE TEST IF
18 THE FIRST ISSUE IS ADDRESSED AND RESOLVED.

19 AND I BELIEVE AN ISSUE IS IN FACT THE
20 INTERPRETATION OF THE HARDWICK DECISION INVOLVING THE
21 RANCHERIA AND THE COUNTY OF MENDOCINO IN TERMS OF THE
22 JURISDICTION TO ZONE AND REGULATE.

23 IT'S NOT CLEAR BY THE JUDGMENT WHO HAS THE ABILITY
24 TO ZONE AND REGULATE. IT INDICATES THAT AS TO THIRD PARTY
25 PURCHASERS, THEIR INTERESTS WILL NOT BE ADVERSELY AFFECTED.

1 THE COURT: HOLD ON A SECOND.

2 ISN'T IT UNDER THE NINTH CIRCUIT LAW, THE MONTANA
3 LAW, THE INDIANS HAVE TO DEMONSTRATE WHEN THEY'RE TRYING TO
4 EXERCISE ZONING OVER NON-INDIAN MEMBERS, SUCH THING THAT
5 THEY'RE DOING IT BECAUSE OF POLITICAL INTEGRITY, ECONOMIC
6 SECURITY AND THE HEALTH AND WELFARE OF THE INDIANS?

7 I ASSUME WHAT THE PLAINTIFFS ARE ARGUING HERE IS
8 THEY HAVE A RIGHT TO ZONE THE CONDUCT OF NON- -- THEY HAVE A
9 RIGHT OVER THE TERRITORY WHICH INCLUDES AUTHORITY OVER
10 NON-INDIANS PRIMARILY BECAUSE OF THE HEALTH AND WELFARE OF
11 THE INDIANS.

12 AND THE NINTH CIRCUIT GOES TO THE ANALYSIS: WHAT
13 IS THE INTEREST OF THE INDIAN IN ZONING THE PROPERTY?

14 MY UNDERSTANDING IS TO MAKE IT NON-INDUSTRIAL.
15 THEY WANT TO HAVE AN AGRICULTURALLY PURE HOMELAND FOR ITS
16 PEOPLE. AND THEY CONTEND THAT A CEMENT FACTORY AFFECTS A
17 VARIETY OF THINGS ON THE HEALTH AND WELFARE OF THE INDIANS
18 ON THEIR ADJOINING -- ON THEIR LAND THERE, THAT THAT WOULD
19 INTERFERE WITH THEIR RIGHT TO HAVE AN AGRICULTURALLY PURE
20 HOMELAND FOR THEIR PEOPLE.

21 THERE'S STEELHEAD FISH ON THE RIVER. THERE'S A
22 TREMENDOUS DUST FROM A CEMENT FACTORY; THERE'S NOISE AND
23 TRAFFIC AND HEAVY TRUCKS. CEMENT FACTORIES BECOME BLIGHTED
24 AREAS AND BLIGHT AFFECTS THE LANDS AROUND BECAUSE OF THE
25 DUST AND THE NOISE, ET CETERA, ALL OF WHICH INTERFERES WITH

1 THE HEALTH AND WELFARE OF THE INDIANS, RELAYING THE FISHING
2 RIGHTS AND USING THE LAND AS AN AGRICULTURAL PURE AREA.

3 AND SO IT STRIKES ME THAT THESE ARE THE ISSUES FOR
4 THE TRIAL.

5 BUT ONCE THEY HAVE A RIGHT TO ZONE IT EVEN THOUGH
6 THE ZONING AFFECTS NON-INDIANS, THEN WHAT ISSUE IS LEFT?

7 MR. FLORES: WELL, YOUR HONOR, I THINK THAT BEFORE
8 YOU GET TO THAT ISSUE -- BECAUSE WE DON'T HAVE A CASE WHERE
9 YOU SIMPLY HAVE A RANCHERIA OUT THERE THAT'S BEEN DETERMINED
10 RANCHERIA LAND AND THERE'S NO AGREEMENT BETWEEN THAT
11 RANCHERIA AND AN ENTITY, A PUBLIC ENTITY -- IN THIS CASE THE
12 COUNTY OF MENDOCINO, AND THE UNITED STATES GOVERNMENT, FOR
13 THAT MATTER -- REGARDING CERTAIN RIGHTS, ONE OF THEM BEING
14 THE RIGHT FOR THE COUNTY OF MENDOCINO TO TAX PROPERTY OUT
15 THERE, ANOTHER RIGHT BEING THAT AFTER JANUARY 1, 1988, THEY
16 COULD EVEN TAX INDIAN PROPERTY THAT HASN'T BEEN PUT INTO
17 TRUSTS, AND ALSO THERE'S A RIGHT REGARDING THIRD PARTY
18 PURCHASERS OF PROPERTY ON THE RANCHERIA PRIOR TO THE
19 JUDGMENT.

20 THE MAYFIELDS RECEIVE THEIR PROPERTY FROM A THIRD
21 PARTY PURCHASER WHO PURCHASED THE PROPERTY AT A TIME HE
22 BELIEVED THE RANCHERIA WAS TERMINATED --

23 THE COURT: IT'S NOT WHAT THEY KNEW; IT'S WHETHER
24 THEY SHOULD HAVE KNOWN. AT THE TIME THEY EXERCISED THE
25 OPTION -- THEY HAD AN OPTION; ISN'T THAT CORRECT?

1 MR. ROSS MAYFIELD: THAT'S CORRECT.

2 THE COURT: AT THE TIME THEY EXERCISED THEIR
3 OPTION, A SUBSTANTIAL PERIOD OF TIME HAD PASSED SINCE THE
4 PROPERTY HAD CEASED TO BE A RANCHERIA AREA; ISN'T THAT
5 RIGHT? IT WAS A PERIOD OF MONTHS.

6 MR. RAPPORT: IT WAS OVER A YEAR, YOUR HONOR.

7 THE COURT: ISN'T THAT RIGHT?

8 MR. RAPPORT: IN FACT, MORE THAN A YEAR IN ADVANCE,
9 NOTICE OF THE PROPOSED SETTLEMENT, WHICH INCLUDED THIS
10 JURISDICTIONAL -- NOTICE IN THE CHANGE OF JURISDICTION WAS
11 PUBLISHED THREE TIMES IN THE LOCAL NEWSPAPER.

12 THE COURT: BUT IN ANY EVENT, THE INDIANS POSSESS
13 INHERENT SOVEREIGN POWER OVER THEIR TERRITORY, WHICH
14 INCLUDES AUTHORITY OVER NON-INDIANS.

15 AND THEN WE HAVE TO DETERMINE WHAT AUTHORITY THEY
16 HAVE TO GOVERNING THEIR LAND WHEN IT AFFECTS NON-INDIAN
17 MEMBERS.

18 MR. FLORES: I AGREE, YOUR HONOR.

19 BUT THEN WE GET TO THE ISSUE -- THAT'S A CASE WHERE
20 THERE'S NO AGREEMENTS -- TO JUDGMENTS THAT WERE AGREED UPON
21 BETWEEN THE PARTIES REGARDING WHAT AUTHORITY.

22 I BELIEVE THE HARDWICK CASE INDICATES AND
23 DELINEATES WHAT THE AUTHORITY IS. AND I BELIEVE THE
24 HARDWICK CASE, INTERPRETED PROPERLY, INDICATES THAT THEY DO
25 NOT HAVE AUTHORITY OVER NON-INDIAN --

1 THE COURT: LET ME TAKE ABOUT A TWO-MINUTE RECESS.

2 (RECESS TAKEN AT 10:55 A.M.)

3 (PROCEEDINGS RESUMED AT 11:04 A.M.)

4 THE COURT: LET ME JUST GET BACK TO THE HEART OF
5 THE CASE FOR A MINUTE.

6 THE HARDWICK CASE SAID THE STATE WAS WRONG, AND IT
7 RETURNED IT TO A RESERVATION, RIGHT?

8 MR. RAPPORT: RIGHT.

9 MR. FLORES: YES.

10 THE COURT: SO AS A MATTER OF LAW, THAT MADE IT A
11 RESERVATION WHICH GAVE THE INDIAN SOVEREIGN RIGHTS OVER
12 THEIR TERRITORIES, CORRECT?

13 MR. FLORES: WELL, THERE'S AN INTERPRETATION THAT
14 MUST BE MADE REGARDING ONE OF THE PARAGRAPHS --

15 THE COURT: WHICH PARAGRAPH ARE YOU TALKING ABOUT?

16 BEFORE YOU STATE THE PARAGRAPH, DON'T YOU AGREE
17 THAT THE HARDWICK CASE ESSENTIALLY IS A JUDGMENT RESTORING
18 TO THE INDIANS ALL THEIR RESERVATION RIGHTS OVER THAT LAND?

19 MR. FLORES: ESSENTIALLY, YES.

20 THE COURT: OKAY. WE AGREE ON THAT THEN, OKAY.

21 SO NOW WE HAVE A LAND THAT'S A RESERVATION IN WHICH
22 WE HAVE THE INDIANS HAVE SOVEREIGN RIGHTS OVER. SO THE ONLY
23 ISSUE IS THAT THEY HAVE A RIGHT TO AFFECT NONMEMBERS. AND
24 YOU GO THROUGH A BALANCING TEST.

25 AND MY ANSWER WOULD BE CLEARLY YES, YES, THEY HAVE

1 A RIGHT UNDER THE BALANCING TEST.

2 MR. FLORES: YOUR HONOR, THE PARAGRAPH -- IT'S
3 EXHIBIT I, PAGE 22, TO THE VERIFIED COMPLAINT, AND --

4 MR. RAPPORT: IT'S QUOTED IN THE BRIEFS ALSO, YOUR
5 HONOR.

6 MR. FLORES: PAGE 2, YOUR HONOR, OF MY BRIEF,
7 POINTS AND AUTHORITIES IN OPPOSITION. IF I MAY READ IT?

8 THE COURT: GO AHEAD.

9 MR. FLORES: "AS A CONSEQUENCE, THIS COURT HAS
10 AUTHORITY AS A COURT OF EQUITY TO REMEDY THE
11 EFFECTS OF THE PREMATURE AND UNLAWFUL
12 TERMINATION OF THE PINOLEVILLE AND REDWOOD VALLEY
13 RANCHERIAS AND THE PLAINTIFFS TO THE EXTENT THAT IT
14 CAN DO SO WITHOUT ADVERSELY AFFECTING THE INTEREST
15 OF THIRD PARTY PURCHASERS FOR VALUE OF RANCHERIA
16 PARCELS."

17 THE COURT: SO YOU ARE SAYING THAT IS NOW
18 RESERVATION LAND, AND ONE OF THE THINGS THAT I HAVE TO
19 CONSIDER IN DETERMINING WHETHER THE INDIANS HAVE RIGHTS TO
20 AFFECT NON-MEMBERS OF THE INDIAN TRIBE, ONE OF THE THINGS I
21 HAVE TO LOOK AT IS HOW PREJUDICIAL IT WOULD BE TO THE RIGHTS
22 OF YOUR PARTIES, RIGHT?

23 MR. FLORES: YES.

24 THE COURT: OKAY. THEN I HAVE TO DECIDE EXACTLY
25 WHAT -- IT ISN'T A QUESTION OF THEM KNOWING THEMSELVES. OR

1 IT'S A QUESTION OF WHAT THEY SHOULD HAVE KNOWN; AND
2 THEREFORE I HAVE TO LOOK AT TWO THINGS.

3 WHAT PROPERTY RIGHTS DID THEY HAVE AT THE TIME THIS
4 JUDGMENT WAS SIGNED? AND AS I UNDERSTAND, THEY HAD NOTHING
5 MORE THAN AN OPTION, RIGHT?

6 MR. FLORES: YES, YOUR HONOR.

7 I BELIEVE THEY ARE SUCCESSORS IN INTEREST --

8 THE COURT: ALL THEY HAVE IS AN OPTION TO PURCHASE
9 PROPERTY; ISN'T THAT RIGHT?

10 MR. FLORES: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: AS OF NOVEMBER 18, 1985, CORRECT?

12 MR. FLORES: PRIOR TO, YES.

13 THE COURT: AND THEY EXERCISE THE OPTION AFTER THIS
14 JUDGMENT CAME OUT.

15 MR. FLORES: THAT'S CORRECT.

16 THE COURT: OKAY. SO THEY HAD VERY LITTLE PROPERTY
17 RIGHTS.

18 HOW MUCH DID THEY PAY FOR THE OPTION, A THOUSAND
19 DOLLARS, 500?

20 MR. BRENT MAYFIELD: THE OPTION WAS IN OUR ORIGINAL
21 LEASE. THERE WAS NO VALUE ON IT.

22 THE COURT: YOU HAD A LEASE WITH AN OPTION TO
23 PURCHASE.

24 MR. BRENT MAYFIELD: YES.

25 THE COURT: OKAY. AND YOU DIDN'T HAVE TO EXERCISE

1 THE OPTION TO PURCHASE, RIGHT?

2 MR. BRENT MAYFIELD: IT WAS OUR INTENTIONS ALL
3 ALONG TO EXERCISE --

4 THE COURT: BUT HE DIDN'T HAVE MUCH PROPERTY RIGHTS
5 IN LOOKING AT THE -- IN LOOKING AT THE EQUITY, ALL THEY WERE
6 WERE LEASEHOLDERS WITH THE POWER TO EXERCISE AN OPTION TO
7 PURCHASE.

8 AND THEY EXERCISED THEIR OPTION TO PURCHASE IN THE
9 FACE OF THE FACT THAT THE LAND WAS NOW BACK TO BEING INDIAN
10 RESERVATION TERRITORY, AND IN FACT BACK TO BEING RESERVATION
11 TERRITORY FOR OVER A YEAR, AS I BELIEVE; IS THAT CORRECT?

12 MR. RAPPORT: FROM NOVEMBER OF '85 UNTIL OCTOBER OF
13 '86.

14 THE COURT: ALMOST A YEAR.

15 MR. RAPPORT: YES.

16 MR. FLORES: AND THERE WAS NEVER ANY QUESTION, UP
17 TO THE TIME OF THIS MORATORIUM ATTEMPT, THIS ORDINANCE, THIS
18 LAST YEAR REGARDING WHO HAD THE AUTHORITY TO REGULATE THE
19 PROPERTY OUT THERE IN TERMS OF ZONING.

20 AND THAT WAS EVEN PRIOR TO THE PART --

21 THE COURT: YOU'RE MISSING THE POINT.

22 AFTER NOVEMBER 18TH, 1985, IT WAS RESERVATION LAND,
23 CORRECT?

24 MR. FLORES: IT WAS RESERVATION LAND WITH THE
25 PROVISIONS OF THE JUDGMENT, THE HARDWICK JUDGMENT.

1 THE COURT: IT WAS RESERVATION LAND.

2 YOU JUST TOLD ME THAT ONE OF THE THINGS I HAD TO
3 CONSIDER IS HOW IT WOULD AFFECT PEOPLE WHO HAD A PROPERTY
4 INTEREST IN THE LAND, CORRECT?

5 MR. FLORES: YES.

6 THE COURT: THEIR PROPERTY INTEREST WAS EXCEEDINGLY
7 MINIMAL.

8 THEY DIDN'T OWN THE LAND. THEY HAD NOTHING MORE
9 THAN A LEASE AND AN OPTION TO PURCHASE, RIGHT?

10 MR. BRENT MAYFIELD: YOUR HONOR, WHEN WE FIRST CAME
11 ON THE PROPERTY, IT HADN'T BEEN SUBDIVIDED, AND WE HELPED
12 DIVIDE AND DO THE IMPROVEMENTS THAT WERE NECESSARY TO
13 COMPLETE THE SUBDIVISION. WE HAD A SUBSTANTIAL INTEREST IN
14 IT ALL ALONG.

15 OUR ORIGINAL LEASE WAS MODIFIED FROM 1982 INTO A
16 LATER DATE SOMETIME IN '85, WHICH I'M NOT FAMILIAR --

17 THE COURT: BUT IN FACT YOU DIDN'T HAVE TO EXERCISE
18 YOUR RIGHT TO PURCHASE. IF YOU DIDN'T PURCHASE, WHAT WOULD
19 YOU HAVE LOST?

20 MR. ROSS MAYFIELD: WE WOULD HAVE LOST THE AMOUNT
21 OF MONEY THAT WE DID OUT OF ALL THE IMPROVEMENTS AND
22 EVERYTHING.

23 THE COURT: HOW MUCH?

24 MR. ROSS MAYFIELD: ABOUT \$50,000.

25 THE COURT: THEN THE ONLY THING I HAVE TO CONSIDER

1 HERE IS, AT BEST, AT BEST -- I CAN'T CONSIDER THEM AS OWNERS
2 OF THE PROPERTY. I CONSIDER THEM, AT BEST, PEOPLE WHO PUT
3 IN IMPROVEMENTS OF LAND EXPECTING TO EXERCISE AN OPTION TO
4 PURCHASE.

5 AND I HAVE TO CONSIDER HOW WISE IT WAS FOR A
6 LEASEHOLDER, WHO HAS AN OPTION TO PURCHASE, TO PUT IN
7 IMPROVEMENTS OF LAND WITHOUT HAVING ALREADY EXERCISED HIS
8 OPTION.

9 SO HOW HIGH THEIR EQUITY FALLS ON THIS SCALE IS
10 NOT -- THAT MAY BE VERY HIGH.

11 AND THE OPTION RAN ONLY TO THE TWO OF THE SIX AND A
12 HALF ACRES, AND THE OTHER LAND WAS PURCHASED AFTERWARDS.

13 MR. BRENT MAYFIELD: WE HAD A VERBAL COMMITMENT
14 BETWEEN US AND THE PEOPLE WE BOUGHT IT FROM, THE JOHNSONS.
15 WE COULDN'T PURCHASE THE PROPERTY UNTIL THE SPLIT HAD
16 ACTUALLY GONE THROUGH.

17 THE COURT: I'M JUST SAYING IT STRIKES ME THAT
18 THEIR PROPERTY RIGHTS WERE MINIMAL. BUT AT BEST THAT'S JUST
19 ONE THING I HAVE TO CONSIDER.

20 BUT I SUGGEST THAT THEY GIVE US SOME VERY -- I
21 DON'T HAVE ANY DETAILS ABOUT WHAT THEIR RIGHTS ARE,
22 AFFIDAVITS FROM THEM OR ANYTHING ELSE, YOU KNOW? YOU'RE
23 REPRESENTING THE COUNTY, NOT REPRESENTING THEM.

24 MR. FLORES: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: SO AS FAR AS THE COUNTY GOES, THE

1 COUNTY CERTAINLY KNEW IT WAS RESERVATION LAND.

2 MR. FLORES: WITH THE PROVISIONS OF THE JUDGMENT,
3 INDICATING -- AND TO THE COUNTY'S WAY OF THINKING, THAT THEY
4 WERE ENTITLED TO REGULATE THE PROPERTY AND DID SO PRIOR TO
5 THE JUDGMENT AFTER THE JUDGMENT, AND DO TODAY.

6 THE COURT: WHAT DOES THAT MEAN?

7 YOU DON'T HAVE ANY RIGHTS TO REGULATE ANYTHING
8 THAT'S ON THE LAND, RIGHT?

9 MR. FLORES: WE BELIEVE THAT THE HARDWICK JUDGMENT
10 ALLOWS US TO REGULATE NON-INDIAN OWNED LAND IN RANCHERIA --

11 THE COURT: WHERE DOES IT SAY THAT AFTER THE
12 HARDWICK JUDGMENT, THE COUNTY WOULD HAVE ANY RIGHTS ON THE
13 RESERVATION?

14 MR. FLORES: I'M SORRY, YOUR HONOR?

15 THE COURT: WHERE DOES IT SAY --

16 MR. FLORES: SPECIFICALLY REGARDING ZONING?

17 THE COURT: SPECIFICALLY REGARDING THE RIGHTS OF
18 THE COUNTY ON THE INDIANS' RESERVATION AFTER IT RETURNED TO
19 BEING A RESERVATION.

20 MR. FLORES: WELL, WE HAVE THE SECTION ON TAXES,
21 AND THAT WAS SPECIFIC -- BECAUSE THAT WAS DISPUTED --

22 THE COURT: WHAT ELSE OTHER THAN TAXES?

23 MR. FLORES: AND ABLE TO REGULATE IT IN TERMS OF
24 THE THIRD PARTY PURCHASERS OR VALUE, YOUR HONOR.

25 THE COURT: THEY WEREN'T THIRD PARTY PURCHASERS TO

1 VALUE --

2 MR. FLORES: TO A PERSON THAT HAD ANY PROPERTY --

3 THE COURT: NONSENSE. THEY PURCHASED THE PROPERTY
4 AFTERWARDS.

5 BUT I SUGGEST WE HAVE SOME AFFIDAVITS AS TO WHAT
6 THEY DID, AND I NEED SOME LAW FROM YOU AS TO WHY YOU DON'T
7 HAVE TO POST A BOND.

8 MR. RAPPORT: I PUT SOME LAW IN OUR POINTS AND
9 AUTHORITIES, YOUR HONOR.

10 THE COURT: WOULD YOU DO THAT FOR ME?

11 FURTHERMORE, I VISUALIZE A TRIAL NOT AS -- THE
12 HARDWICK CASE IT SEEMS TO ME PUTS THIS CASE BACK TO BEING
13 RESERVATION LAND, AND YOU AGREE.

14 MR. FLORES: WELL --

15 THE COURT: AND AS A MATTER OF LAW, IT IS
16 RESERVATION LAND, AND THEREFORE ALL I HAVE TO CONSIDER
17 REALLY AT A TRIAL IS WHAT, UNDER THE BALANCING ACT, WHAT
18 RIGHTS DO THE INDIANS HAVE TO REGULATE NON-MEMBER LAND
19 WITHIN THE RESERVATION.

20 MR. FLORES: NOW, SEE, YOUR HONOR, IF I MAY JUST
21 INDICATE SOMETHING, THE COUNTY -- THE COUNTY IS REGULATING
22 RIGHT NOW -- AND THE PRELIMINARY INJUNCTION COMES IN, WE
23 WON'T, OF COURSE, IN TERMS OF ANY USES OUT THERE -- BUT
24 THERE ARE A LOT OF INDIVIDUALS OUT THERE WHO PURCHASED
25 PROPERTY PRIOR TO THE INITIATION OF THE HARDWICK CASE.

1 THE COURT: I CAN ONLY TAKE IT ONE INDIVIDUAL AT A
2 TIME.

3 MR. FLORES: I'M JUST INDICATING THERE IS A BROAD
4 PICTURE HERE, YOUR HONOR.

5 THE COURT: NOT TO ME THERE ISN'T.

6 THEY ARE ASKING A PRELIMINARY INJUNCTION AS TO TELL
7 THESE PEOPLE TO STOP USING THEIR CEMENT PROPERTY. CORRECT?

8 MR. RAPPORT: OUR PRELIMINARY INJUNCTION WE ASKED
9 FOR WAS SPECIFICALLY TO THE MAYFIELD PROPERTY.

10 THE COURT: IT DOESN'T AFFECT ANYBODY ELSE'S
11 PROPERTY.

12 WOULD THEIR CASE BE DIFFERENT IF THEY HAD SPENT \$2
13 MILLION ON PROPERTY AND BOUGHT IT BEFORE THE HARDWICK CASE?

14 MR. FLORES: I THINK IF THEY HAD PURCHASED IT PRIOR
15 TO THE INCEPTION OF THE HARDWICK CASE, OBVIOUSLY.

16 THE COURT: OF COURSE IT WOULD HAVE BEEN
17 SUBSTANTIALLY DIFFERENT.

18 ALL I HAVE IS THEIR CASE RIGHT NOW, AND IT STRIKES
19 ME THAT THERE'S A VERY GOOD CASE HERE FOR A PRELIMINARY
20 INJUNCTION BEING GRANTED, BUT I'LL HANDLE IT IN WRITING.

21 MR. ROSS MAYFIELD: WE DIDN'T GET ANY NOTICE OR
22 NOTIFICATION UNTIL MAY THAT WE WERE ON INDIAN PROPERTY AND
23 THAT THEY WANTED TO REGULATE US UNTIL MAY. OTHERWISE WE
24 WOULDN'T EVEN PURCHASED OR EVEN BEEN IN THAT AREA.

25 THE COURT: I SUGGEST YOU HAVE AN ATTORNEY REALLY,

1 BECAUSE EVERYTHING YOU DO HAS TO BE PUT IN WRITING.

2 MR. ROSS MAYFIELD: OKAY.

3 THE COURT: I REALLY DO. IT STRIKES ME THAT YOU
4 DIDN'T HAVE -- THAT YOU DIDN'T HAVE MUCH OF A PROPERTY RIGHT
5 BEFORE. YOU HAD AT BEST A LEASEHOLD WITH AN OPTION TO BUY A
6 SMALL PORTION OF THE PROPERTY. AND SUBSEQUENT TO THE LAND
7 BEING INDIAN RESERVATION LAND, YOU WENT AHEAD AND BOUGHT.

8 WE NEED FROM YOU SOME FURTHER AUTHORITIES AS TO WHY
9 YOU DON'T HAVE TO PUT UP A BOND.

10 MR. RAPPORT: THAT WOULD BE FINE, YOUR HONOR.

11 THE COURT: AND I'D LIKE SOME DETAIL AS TO THE
12 INDIANS' FINANCES, SOME DETAILS AS TO THEIR RIGHT TO BORROW,
13 COME UP WITH \$10,000 BOND --

14 MR. RAPPORT: WELL, I'LL GIVE YOU AN AFFIDAVIT ON
15 THEIR FINANCES THEN AND ALSO --

16 THE COURT: -- AND WHAT THEY OWN AND WHAT RIGHT
17 THEY HAVE TO BORROW MONEY ON IT FOR PURPOSES OF THIS
18 LAWSUIT, THINGS OF THAT NATURE, YOU KNOW?

19 MR. RAPPORT: YES, SIR.

20 MR. BRENT MAYFIELD: CAN I ADJUST ONE SMALL THING
21 HERE?

22 IN MARIE POLLOCK'S DEPOSITION, THEY ADVERTISED THE
23 MORATORIUM TO LAST FOR A SIX-MONTH PERIOD, AND IN THE
24 MORATORIUM ITSELF, IT SAYS A ONE-YEAR PERIOD.

25 THE SIX MONTHS WOULD BE UP ON THE 22ND OF THIS

1 MONTH.

2 THE COURT: I DON'T UNDERSTAND WHAT YOU'RE TALKING
3 ABOUT.

4 MR. BRENT MAYFIELD: IN THE ADVERTISEMENT, IN THE
5 PAPER WHERE THEY ADVERTISED THE MORATORIUM ITSELF, THEY SAID
6 THAT THE MORATORIUM WOULD BE SIX MONTHS --

7 THE COURT: THE MORATORIUM IS A DIFFERENT THING
8 ENTIRELY. THE MORATORIUM --

9 MR. RAPPORT: WELL, YOUR HONOR, THAT'S THE
10 ORDINANCE THAT THE TRIBE HAD ENACTED. WHEN THEY INITIALLY
11 PUBLISHED, THEY WERE CONTEMPLATING SIX MONTHS.

12 AT THE HEARINGS WHICH WERE CONTINUED -- THEY HAD
13 TWO HEARINGS -- THEY HAD DETERMINED AND ISSUED A ONE-YEAR
14 MORATORIUM.

15 I DON'T SEE WHAT DIFFERENCE IT MAKES WHETHER THEY
16 INITIALLY ADVERTISED PRIOR TO HAVING THEIR HEARING ON
17 ADOPTING THE HEARINGS. EVERYBODY APPEARED AT THE HEARINGS,
18 AND AFTER CONSIDERABLE DISCUSSION, A NUMBER OF CHANGES WERE
19 MADE IN THE ORDINANCE, WHICH IS THE PURPOSE OF THE HEARINGS.

20 AND THE END RESULT IS THEY ENACTED AN ORDINANCE,
21 WHICH IS THE ONE THAT'S BEFORE YOU TODAY.

22 THE COURT: I DON'T THINK THAT HAS MUCH EFFECT ON
23 THE CASE AT ALL. I THINK IT REALLY -- IT SEEMS TO ME IT'S
24 INDIAN RESERVATION LAND AFTER THE HARDWICK JUDGMENT.

25 THEY HAVE CERTAIN RIGHTS -- NOT MANY -- TO GOVERN

1 NON-INDIAN PEOPLE THAT ARE ON THE RESERVATION THAT OWN THE
2 LAND. BUT THEY HAVE A BALANCING TEST. IF YOU READ THE
3 UNITED STATES SUPREME COURT CASE OF MONTANA, THE NINTH
4 CIRCUIT CASE FOLLOWING, THE BALANCE IS RIGHT. BUT IT SEEMS
5 TO ME THAT WITH WHAT I HAVE, THEY PREVAIL.

6 I APPRECIATE THERE SHOULD BE A TRIAL ON THAT ISSUE
7 AS TO WHAT EQUITY RIGHTS YOU HAVE. I SUGGEST YOU GET A
8 LAWYER.

9 HE'S NOT YOUR LAWYER. HE ONLY REPRESENTS THE
10 COUNTY.

11 MR. BRENT MAYFIELD: OUR LAWYER WAS UNABLE TO BE
12 HERE TODAY, YOUR HONOR. HE WAS IN ANOTHER COURT.

13 THE COURT: OH. WELL, BETTER SEND SOMEBODY ELSE
14 THEN. HE HAS TO FILE SOME REAL DOCUMENTS AS TO WHAT HE
15 CLAIMS WHAT FACTORS OF YOURS I SHOULD BALANCE. AND I DON'T
16 THINK I CAN BALANCE THE FACT THAT YOU DIDN'T KNOW. OKAY?
17 EXACTLY WHAT PROPERTY RIGHTS YOU HAD BEFORE, WHAT IT WENT
18 TO, HOW MANY ACRES.

19 MY REMEMBRANCE OF THE FACTS ARE THAT YOU HAD A
20 LEASEHOLD TO BUY -- YOU HAD A LEASEHOLD. YOU HAD AN OPTION
21 TO BUY TWO OF THE ACRES I THINK; ISN'T THAT RIGHT?

22 MR. BRENT MAYFIELD: THAT WAS THE ORIGINAL, BUT IT
23 HAD BEEN MODIFIED.

24 THE COURT: I UNDERSTAND THAT.

25 BUT HOW WAS IT AS OF THE DATE OF THE HARDWICK CASE?

1 MR. ROSS MAYFIELD: IN '83 WE WENT TO THE SIX
2 ACRES.

3 THE COURT: BUT I MEAN --

4 MR. ROSS MAYFIELD: SIX POINT SOME ODD ACRES, YOUR
5 HONOR.

6 MR. RAPPORT: I DON'T UNDERSTAND WHY THEY SUBMITTED
7 A LEASE THAT WAS ENTERED IN '82. IT WAS THE ONLY LEASE THEY
8 SUBMITTED TO THE COURT WITH THEIR AFFIDAVITS --

9 THE COURT: THE ONLY LEASE THAT YOU HAVE IS THE ONE
10 THAT I'VE SEEN, AND IT SEEMS TO GO WITH TWO ACRES.

11 I SUGGEST YOU FILE IT WITHIN ONE WEEK, AND I'LL
12 SUBMIT THE MATTER AND GIVE YOU AN OPINION ON IT.

13 I SUBMIT THAT THE TRIAL COULD BE ONLY ON THIS
14 ISSUE, ON THE BALANCING TEST.

15 MR. RAPPORT: IN THAT CASE, YOUR HONOR, IT MAY BE
16 POSSIBLE TO DO IT BY SUMMARY JUDGMENT.

17 THE COURT: PERHAPS IT MAY BE.

18 MR. RAPPORT: YEAH.

19 THE COURT: OKAY?

20 MR. RAPPORT: WE ALSO HAVE A STATUS CONFERENCE I
21 THINK FOR THE 9TH -- FOR DECEMBER 15TH.

22 THE COURT: I'LL TAKE THAT OFF.

23 MR. FLORES: THANK YOU, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU. IT WILL BE OUT
25 WITHIN THE NEXT TWO OR THREE WEEKS. OKAY?

(PROCEEDINGS ADJOURNED AT 11:17 A.M.)

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